

**BUSINESS ASSOCIATE AGREEMENT  
BETWEEN  
THE KANSAS DEPARTMENT FOR AGING AND  
DISABILITY SERVICES  
AND  
COMCARE OF SEDGWICK COUNTY**

THIS Business Associate Agreement (the "Agreement") is made and entered into effective July 1st, 2018, by and between the Secretary of the Kansas Department for Aging and Disability Services ("KDADS") and COMCARE of Sedgwick County, having its principal address at 271 W. Third Street N, Suite 600, Wichita, Kansas 67202, ("Business Associate"), all of whom may collectively hereinafter be referred to as the "Parties".

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public law 104-191, known as "the Administrative Simplification provisions" direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplifications provisions, the Secretary of Health and Human Services issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Security and Privacy Rule"); and

WHEREAS, the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) pursuant to Title XIII of Division A and Title IV of Division B, called the "Health Information Technology for Economic and Clinical Health" (the "HITECH ACT") provides modifications to the HIPAA Security and Privacy Rule (hereinafter all references to the "HIPAA Security and Privacy Rule" are deemed to include all amendments to such rule contained in the HITECH ACT and any accompanying regulations, and any other subsequently adopted amendments or regulations including the final rule issued January 25, 2013 (FR Vol. 78, No. 17 (Jan. 25, 2013))); and

WHEREAS, the Parties have entered into one or more agreements ("Underlying Agreement") whereby Business Associate will provide certain services to KDADS and, pursuant to such agreement, Business Associate is considered a "business associate" of KDADS as defined in the HIPAA Security and Privacy Rule at 45 CFR 160.103.

NOW, THEREFORE, for and in consideration of their mutual promises contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**I. INTRODUCTION**

In furtherance of its duties specified in the Underlying Agreement, Business Associate may receive from KDADS Protected Health Information ("PHI"). Federal and state laws restrict use or disclosure of such identifiable health information. The exchange of information by the

Parties is governed by HIPAA, as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), the federal regulations published at 45 C.F.R. parts 160 and 164 and amendments thereto including the final rule published 78 Fed. Reg. 17 (Jan. 25, 2013) (collectively hereinafter termed "HIPAA"), Federal law 42 U.S.C. § 290dd-2: Confidentiality of Records and amendments thereto, and the federal regulations published at 42 C.F.R. part 2: Confidentiality of Alcohol and Drug Abuse Patient Records and amendments thereto (hereinafter termed "42 C.F.R. Part 2"). With regard to the services that the Business Associate will be providing, KDADS is a "Covered Entity" and the Parties are entering into this Agreement to establish the responsibilities of the Covered Entity and the Business Associate regarding PHI. The Parties acknowledge that as provided for in 45 CFR 160.103(2) Business Associate may also be a covered entity however, for purposes of this agreement, the term Covered Entity refers exclusively to KDADS.

## **II. DEFINITIONS**

### **A. Catch-all provision**

Except as otherwise defined herein, any and all terms used in this Agreement shall have the same meaning as those terms in HIPAA including: *Protected Health Information, Unsecured Protected Health Information, Breach, Minimum Necessary, Notice of Privacy Practices, Use, Disclosure, Individual, Secretary, Security Incident, Subcontractor, Required by Law, Health Care Operations, Data Aggregation, and Designated Record Set.*

### **B. Specific definitions**

(1) Business Associate. "*Business Associate*" shall generally have the same meaning as the term "*business associate*" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean COMCARE of Sedgwick County.

(2) Workforce. "*Workforce*" shall generally have the same meaning as the term "*workforce*" at 45 CFR 160.103, meaning employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity or business associate, is under the direct control of such covered entity or business associate, whether or not they are paid by the covered entity or business associate.

(3) Covered Entity. "*Covered Entity*" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean KDADS.

(4) Protected Health Information ("PHI"). "*PHI*" shall have the same meaning as the term "*Protected health information*" at 45 CFR 160.103; individually identifiable health information (*except as provided in paragraph (2) of the definition of PHI in 45 CFR 160.103*) original data and any health data derived or extracted from the original data that has not been de-identified and is transmitted by or maintained in electronic media or transmitted or maintained in any other form or medium. PHI includes,

without limitation, "Electronic Protected Health Information" or "EPHI," as defined below.

(5) Electronic Protected Health Information ("EPHI"). "EPHI" shall have the same meaning as the term "Electronic protected health information" at 45 CFR 160.103; a subset of PHI that is transmitted by Electronic Media or maintained in Electronic Media.

(6) Security Incident. "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as defined in 45 CFR 164.304.

(7) Breach. "Breach" shall mean the acquisition, access, use or disclosure of Protected Health Information (PHI) in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI, and subject to the exceptions set forth in 45 CFR. 164.402.

(8) Unsecured Protected Health Information ("UPHI"). UPHI shall have the same meaning as the term "unsecured protected health information" in 45 CFR 164.402, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

### **III. OBLIGATIONS OF KDADS**

KDADS shall designate one liaison to serve as the single point of contact for Business Associate as identified in Section X of this Agreement, or as later amended.

KDADS shall notify Business Associate of any limitation(s) in the KDADS Notice of Privacy Practices under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

KDADS shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his/her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

KDADS shall notify Business Associate of any restriction on the use or disclosure of PHI that KDADS has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

KDADS shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA or 42 C.F.R. Part 2, if done by KDADS.

### **IV. GENERAL OBLIGATIONS OF BUSINESS ASSOCIATE**

Business Associate acknowledges and agrees as follows:

(1) Business Associate shall designate one liaison to serve as a single point of contact for KDADS as identified in Section X of this Agreement, or as later amended.

(2) Business Associate will use or disclose the PHI solely to perform functions, activities, or services for, or on behalf of KDADS as specified in the Underlying Agreement, provided that such use or disclosure would not violate HIPAA if done by KDADS, or as required by law.

(3) Business Associate acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received from KDADS identifying or otherwise relating to PHI, Business Associate is fully bound to comply with the provisions of the federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(4) Business Associate agrees that all PHI obtained in the scope of this Agreement is confidential and agrees that it shall safeguard and prevent the use and/or disclosure of the PHI other than as permitted in this Agreement or in accordance with federal and state law. Further, Business Associate agrees not to disclose any PHI obtained from the KDADS for purposes other than those described herein unless it has obtained express written prior approval from KDADS or as contained in an Underlying Agreement, or as required by law.

(5) Business Associate agrees to inform all workforce members, agents and subcontractors accessing PHI that the violation of this Agreement may result in disciplinary action or criminal prosecution if warranted. Business Associate also agrees to take appropriate disciplinary action against its respective workforce members, agents and subcontractors that are found to have violated this Agreement, in a manner consistent with Business Associate's policies and procedures. Business Associate agrees to provide KDADS upon request a copy of its policies and procedures relative to HIPAA compliance.

(6) Business Associate agrees that it is responsible for compliance with the terms of this Agreement by its workforce, agents, subcontractors and any and all other persons or entities which may have access to the PHI, its use or disclosure, as part of the Underlying Agreement between KDADS and Business Associate.

(7) Business Associate may not release, reproduce, distribute or publish any PHI or other confidential information obtained in the performance of this Agreement without prior written permission of KDADS, which shall not be unreasonably withheld. This provision does not apply to uses and disclosures related to Business Associate's role as a covered entity to carry out treatment, payment, or healthcare operations; in response to a valid authorization per 45 C.F.R. 164.508; routine requests for use, disclosure, access or copies of PHI by Business Associate clients, client guardians, and health care providers; a permitted use or disclosure per 45 C.F.R. 164.512; or as otherwise required by law. Business Associate agrees to use reasonable and

appropriate safeguards to maintain the privacy and confidentiality of data obtained from KDADS.

**A. Security obligations**

The Security Standards specified in 45 CFR 164 Subpart C including the requirements of Sections 164.306, 164.308, 164.310, 164.312, 164.314 and 164.316, apply to the Business Associate in the same manner that such sections apply to KDADS (45 CFR 164.302). The Business Associate's required obligations include, but are not limited to, the following:

(1) Safeguards to be in Place: Business Associate shall abide by all applicable provisions of the Security Standards and use all appropriate safeguards to ensure the confidentiality, integrity, and availability of PHI the covered entity or business associate creates, receives, maintains, or transmits and prevent the use or disclosure of PHI other than as provided for by this Agreement. Without limiting the generality of the foregoing sentence, Business Associate shall:

- a. Implement Administrative, Physical and Technical Safeguards that are required and those that are reasonable and appropriate to protect the confidentiality, integrity, and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of KDADS as required;
- b. Adopt written policies and procedures to implement the same Administrative, Physical and Technical Safeguards currently required;
- c. Implement technical policies and procedures as required by the most current guidance issued by the Secretary of Health and Human Services on the use of reasonable and appropriate Technical Safeguards;
- d. Ensure in accordance with 164.308(b)(2) that any subcontractors that create, receive maintain, or transmit electronic PHI on behalf of Business Associate agree to comply with the applicable requirements of 45 CFR 164 Subpart C by entering into a contract that complies and reporting to the covered entity any security incident of which it becomes aware, including breaches of UPHI as required by 164.410; and
- e. Comply with the policies, procedures, documentation and implementation standards and requirements in accordance with 164.306 and 164.316.

**V. PRIVACY OBLIGATIONS**

Pursuant to applicable law, PHI that Business Associate will have access to and/or receive from KDADS may be used or disclosed only in accordance with this Agreement and the Privacy Rule. KDADS is a Covered Entity under the act and therefore Business Associate is not permitted to use or disclose PHI in ways that KDADS could not use or disclose the PHI. This protection continues as long as the data is in the hands of Business Associate. Business

Associate agrees to comply with the privacy obligations imposed by HIPAA including but not limited to:

A. Required/Permitted Uses - 164.504(e)(2)(i). Business Associate is required/permitted to use the PHI only for the purposes described in the Underlying Agreement.

B. Required/Permitted Disclosures - 164.504(e)(2)(i). Business Associate shall disclose KDADS' PHI only as allowed herein or as specifically in the Underlying Agreement, or as specifically directed by KDADS.

C. Limitation of Use and Disclosure - 164.504(e)(2)(ii)(A). Business Associate agrees that it will not use or further disclose PHI other than as permitted or required by this Agreement, the Contract or as required by law.

D. Disclosures Allowed for Management and Administration - 164.504(e)(2)(i)(A) and 164.504(e)(4)(i). Notwithstanding any other provision to the contrary herein, Business Associate is permitted to use and disclose PHI received from KDADS in its capacity as a recipient of PHI from KDADS if such use is necessary for the management and administration of the Business Associate's obligations under the Underlying Agreement with KDADS or to carry out the legal responsibilities of Business Associate and for data aggregation services, if such services are to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of PHI by Business Associate with the PHI received by business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

E. Minimum Necessary. Business Associate agrees to limit the amount of PHI used and/or disclosed pursuant to this Agreement to the minimum necessary to achieve the purpose of the use and disclosure.

F. Safeguarding and Securing PHI - 164.308, 164.310, 164.312, 164.314 and 164.504(e)(2)(ii)(B). Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI and/or EPHI that Business Associate creates, receives, maintains, or transmits under this Agreement. Business Associate will furnish KDADS with a written description of such safeguards upon request. Business Associate agrees to allow authorized representatives of KDADS access to premises where the PHI and/or EPHI is kept for the purpose of inspecting physical security arrangements during normal business hours and upon reasonable prior written notice to Business Associate. Because the PHI belonging to KDADS may be co-located with that from other entities, KDADS agrees not to use or disclose any such PHI with which it comes into contact during such inspections.

Business Associate shall use reasonable efforts to update its privacy and security policies, procedures, processes and protections as operational and environmental changes warrant, safeguarding the privacy and security of PHI provided under this Agreement. On an annual basis, Business Associate shall conduct an internal review and evaluation of physical and data

security operating procedures and personnel practices and shall provide KDADS with verification of such review.

G. Workforce, Agents and Sub-Contractors - 164.504(e)(2)(ii)(D). Business Associate will ensure that any entity, including its workforce, agents, and subcontractors, to whom it discloses PHI received from KDADS or created or received by Business Associate on behalf of KDADS, agree to the same restrictions, conditions and safeguards that apply to Business Associate with respect to such information.

H. Right to Review. KDADS reserves the right to review terms of agreements and contracts between the Business Associate and its workforce, agents, and subcontractors as they relate to the use and disclosure of PHI belonging to KDADS.

I. Ownership. Business Associate shall at all times recognize ownership of the PHI by KDADS.

J. Notification of Disclosure - 164.304, 164.314 (a)(2)(C) and 164.504(e)(2)(ii)(C). Business Associate shall notify KDADS, both orally and in writing, of any use or disclosure of PHI and/or EPHI not allowed by the provisions of this Agreement of which it becomes aware. Business Associate shall report to KDADS any security incident which compromises the privacy and/or security of KDADS PHI within ten (10) business days of becoming aware of such incident. In the event of a security breach or disclosure that compromises the privacy or integrity of PHI, Business Associate shall, within ten (10) business days of the discovery of said breach or disclosure, notify the KDADS privacy officer and shall take all other measures required by state or federal law. Business Associate shall provide KDADS with a copy of its investigation results. KDADS will take appropriate remedial measures up to termination of this Agreement pursuant to Section 17 below.

K. Transmission of PHI 164.312 (c)(1) and 164.312 (c)(2). Business Associate agrees to comply with HIPAA standards and, where applicable, 42 C.F.R. Part 2 standards with regard to the transmission of PHI. All PHI exchanged between KDADS and Business Associate will be via a mutually agreed upon secure mechanism. If electronic media is utilized, such information will be password protected by a password consisting of at least eight characters with four (4) character types (upper case, lower case, symbols and numbers) and will be encrypted.

L. Employee and/or Agent Compliance with Applicable Laws and Regulations. Business Associate agrees to require each of its workforce, agents and subcontractors having any involvement with the PHI to comply with applicable laws and regulations relating to security, confidentiality and privacy of the PHI and with the provisions of this Agreement.

M. Custodial Responsibility. Business Associate will designate an employee as the custodian of PHI and will be responsible for observance of all conditions of use. If custodianship is transferred within the organization, Business Associate shall notify KDADS, in writing within ten (10) days of any such transfer.

N. Access, Amendment, and Accounting of Disclosures 164.504(e)(2)(ii)(E-G). Business

Associate will provide access to the PHI in accordance with 45 C.F.R. 164.524, and any fee assessed for access to PHI provided by KDADS to Business Associate in paper format shall be a reasonable, cost based fee consistent with the requirements of 45 C.F.R. 164.524 (e.g., labor and supplies for copying records; postage; preparation of an explanation or summary of PHI). Business Associate will make the PHI available for amendment and incorporate any amendments to the PHI in accordance with 45 C.F.R. 164.526. Business Associate will make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528.

In addition, Business Associate must provide access in an electronic format to any PHI provided by KDADS to Business Associate in an electronic format and thereafter maintained in an Electronic Health Record by Business Associate, if so requested by an Individual as specified in 164.502. Access to and a copy of the PHI must be provided to the Individual who made the request or a person of the Individual's choosing. Any fee that Business Associate may charge for such copy in an electronic format shall be a reasonable, cost-based fee (e.g., labor costs to review the access request and to produce the electronic copy; costs of supplies, including electronic media; postage for mailing electronic media) in responding to the request.

O. Documentation Verifying HIPAA Compliance 164.504(e)(2)(ii)(H). Business Associate will make its policies, procedures, and documentation relating to the security and privacy of PHI, including EPHI, available to the Secretary of Health and Human Services for purposes of determining KDADS' compliance with 45 C.F.R. Parts 160 and 164. Business Associate will make these same policies, procedures, and documentation available to KDADS or its designee upon request.

P. Contract Termination 164.314(a)(2)(i)(D) and 164.504(e)(2)(ii)(I). Business Associate agrees that within forty-five (45) days of the termination of this Agreement, it will return or destroy, at KDADS' direction, any and all PHI that it maintains in any form and will retain no copies of the PHI, except as permitted in an Underlying Agreement. If the return or destruction of the PHI is not feasible, the protections of this section of the Agreement shall be extended to the information, and further use and disclosure of PHI is limited to those purposes that make the return or destruction of PHI infeasible. Any use or disclosure of PHI, except for the limited purpose, is prohibited. KDADS acknowledges and agrees that Business Associate will retain KDADS Member PHI as necessary for the purposes of performing its obligations under the Underlying Agreement, carrying out its legal responsibilities, and ongoing licensure, as applicable.

Q. Duty to Record Disclosures. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for KDADS to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Information that Business Associate is required to document includes, but is not limited to, disclosures made by Business Associate through an Electronic Health Record for purposes of treatment, payment or health care operations.

R. Duty to Provide Record of Disclosures to KDADS. Business Associate agrees to provide to KDADS or an Individual, in a time and manner specified by KDADS, information



collected in accordance with Section 18, in order to permit KDADS to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. If an Individual requests that KDADS provide him or her with an accounting of disclosures made through an Electronic Health Record, KDADS may elect to request the information from Business Associate, as provided above, and provide the Individual with the accounting directly, or, in the alternative, provide the Individual with Business Associate's contact information (mailing address, phone and email address) and require Business Associate to provide the accounting of disclosures made through the Electronic Health Record directly to the Individual.

S. Application of Knowledge Standards. If KDADS knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate obligations under HIPAA, upon notification from KDADS, Business Associate shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, KDADS shall either: (i) terminate the contract, if feasible; or (ii) if termination is not feasible, report the problem to the Secretary.

T. Prohibition on Sale of PHI. Business Associate is prohibited from receiving any remuneration, directly or indirectly, in exchange for any PHI.

U. Prohibition on Marketing. Business Associate is prohibited from engaging in any marketing activities or communications with any Individuals unless so allowed by the terms of the Agreement or 45 C.F.R. 164.508(a)(3).

## **VI. TERM**

This Agreement shall continue in force unless otherwise terminated herein, and shall terminate as to each Underlying Agreement when all PHI provided by KDADS to Business Associate, or created or received by Business Associate on behalf of KDADS pursuant to the Underlying Agreement, is destroyed or returned to KDADS. Despite such termination, herein, Business Associate agrees to protect any remaining PHI in accordance with the provisions herein and applicable HIPAA, state or federal law.

## **VII. TERMINATION**

A. Termination with Cause. Upon KDADS' knowledge of a material breach or violation by Business Associate of this Agreement, KDADS may:

- (1) Provide written notice of such breach or violation to Business Associate and an opportunity for Business Associate to cure the breach or end the violation within a reasonable period specified by KDADS, or may terminate this Agreement and the Underlying Agreement (or the applicable provisions thereof) if Business Associate does not cure the breach or end the violation within the time specified by KDADS;

(2) Immediately terminate this Agreement and the Contract (or the applicable provisions thereof) if Business Associate has breached a material term of this Agreement and cure is not feasible; or

(3) If neither termination nor cure is feasible, report the violation to the Secretary. The termination provisions of this Agreement shall supersede any termination provisions of the Underlying Agreement as it relates to Business Associate's use of PHI.

(4) This Agreement can be terminated without cause by KDADS with thirty (30) days written notice; provided, that Business Associate may continue to use the PHI for a reasonable period of time following such termination in order to perform any of its remaining obligations under the Contract and in accordance with Section V.P.

(5) A material breach shall include, but is not limited to, Business Associate's improper use or disclosure of PHI, any changes or diminution of Business Associate's security procedures or safeguards relating or pertaining to PHI that are unsatisfactory to KDADS or a breach of any provision(s) of this Agreement.

B. Termination after Repeated Violations. KDADS may terminate the Underlying Agreement if Business Associate repeatedly violates this Agreement or any provision hereof, regardless of whether, or how promptly, Business Associate may remedy such violation after being notified of the same. In the event of such termination, KDADS shall not be liable for payment of any services performed or expense incurred by Business Associate after the effective date of such termination, except for services provided in conjunction with Section VII.A.4 above.

C. Changes in Law. In the event of passage of a law or promulgation of a regulation or an action or investigation by any regulatory body which would prohibit the relationship between the Parties, or the operations of either Party with regard to the subject of this Agreement, the Parties shall attempt in good faith to renegotiate the Agreement to delete the unlawful provision(s) so that the Agreement can continue. If the Parties are unable to renegotiate the Agreement within thirty (30) days, the Agreement shall terminate immediately upon written notice of either Party.

D. Effect of Termination.

(1) Except as otherwise provided in this Agreement, upon termination of this Agreement for any reason, Business Associate shall return or destroy (at KDADS' election), and shall retain no copies of, all PHI received from KDADS, or created or received by Business Associate on behalf of KDADS. Business Associate shall ensure that this provision shall apply equally to PHI that is in the possession of subcontractors of Business Associate or agents of Business Associate.

(2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to KDADS written notification of the conditions that make return or destruction infeasible. Upon KDADS' written approval, which shall not be unreasonably withheld, Business Associate may retain the PHI, but

shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## **VIII. DISCLAIMER**

KDADS makes no warranty or representation that compliance by Business Associate with this agreement, HIPAA, or 42 C.F.R. Part 2 will be adequate or satisfactory for Business Associate's own purposes or that any information in the possession or control of Business Associate, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure, nor shall the KDADS be liable to Business Associate for any claim, loss or damage relating to the unauthorized use or disclosure by Business Associate from the KDADS or from any other source, Business Associate acknowledges that it is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

## **IX. GENERAL PROVISIONS**

A. Business Associate and KDADS, to the extent permitted by Kansas law, agree to assume responsibility for their own respective losses, damages, judgments, and costs of liability they incur arising from their own improper release or use of PHI provided or developed under this Agreement.

B. Business Associate agrees, to the extent permitted by Kansas law, to hold the KDADS harmless and to assume responsibility for any and all claims, demands, and causes of action of every kind and character arising out of, or in connection with, acts or omissions by Business Associate under this Agreement. KDADS agrees, to the extent permitted by Kansas law, to hold the Business Associate harmless and to assume responsibility for any and all claims, demands, and causes of action of every kind and character arising out of, or in connection with, acts or omissions by KDADS under this Agreement. Such liability of the parties shall be as defined under the Kansas Tort Claims Act.

C. Business Associate expressly understands that KDADS makes no guarantee of accuracy regarding the information provided in performance of this Agreement. Information provided to Business Associate can only be as accurate as the information received by the KDADS. KDADS shall have no liability to any party if KDADS' software or data is unavailable, or is not correct in any respect. Business Associate shall have no liability for the improper payment or adjudication of a claim due to inaccurate information provided to Business Associate by KDADS.

D. Once Business Associate uses the information supplied by KDADS for the purposes described in each Underlying Agreement and has disposed of the information in a manner consistent with the terms of this Agreement, this Agreement shall expire as to that Underlying Agreement. Business Associate understands that additional requests for data will require reauthorization from KDADS. The obligations of this Agreement will survive the expiration or termination of this Agreement.

E. There is no third-party beneficiary to this agreement between the Parties. This agreement is only intended to benefit the Parties to this agreement.

F. In the event of an inconsistency between the provisions of this Agreement and the mandatory terms of HIPAA and 42 C.F.R. Part 2 (as may be expressly amended from time to time by the HHS or as a result of final interpretations by HHS, a court with applicable jurisdiction, or another regulatory agency with authority over the Parties), the provisions of HIPAA and 42 C.F.R. Part 2, as applicable, shall prevail.

G. Where provisions of this Agreement are different from those mandated by HIPAA and/or 42 C.F.R. Part 2, but are nonetheless permitted by HIPAA or 42 C.F.R. Part 2, the provisions of the Agreement shall control.

H. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with the Privacy Rule, the Electronic Transactions Standards, or any other requirements under HIPAA or 42 C.F.R. Part 2.

I. This Agreement shall be binding upon and inure to the benefit of the respective legal successors of the Parties. Neither this Agreement nor any rights or obligations hereunder may be assigned, in whole or in part by Business Associate, without the prior written consent of KDADS.

J. All PHI shall be and remain the exclusive property of KDADS. Business Associate agrees that it acquires no title or property rights whatsoever to the PHI as a result of this Agreement.

K. The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement.

L. The Parties agree to cooperate and take such action as is necessary to amend this Agreement from time to time as is necessary for KDADS to comply with the requirements of HIPAA.

M. A reference in this Agreement to a section in the HIPAA regulations, the Security or Privacy Rule, or the Electronic Transactions Standards, 42 C.F.R. Part 2, or the HITECH ACT means the section as in effect or as amended.

N. This document, together with any written schedules, amendments and addenda, constitutes the entire agreement of the Parties and supersedes all prior oral and written agreement negotiations or understandings between them with respect to the matters provided for herein.

O. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas to the extent that the provisions of HIPAA, 42 C.F.R. Part 2, the Security or Privacy Rule, and/or the HITECH ACT and regulations promulgated thereunder do not preempt the laws of the State of Kansas. Should a pretrial be necessary, the Parties agree that the sole venue shall be the District Court of Shawnee County, Topeka, Kansas.

P. The Agreement (and any amendments, modifications, or waivers in respect hereof) may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document. Facsimile signatures or signatures emailed in portable document format (PDF) shall be acceptable and deemed binding on the Parties hereto as if they were originals.

Q. The use of the masculine, feminine or neuter genders, and the use of the singular and plural, shall not be given an effect of any exclusion or limitation herein. The use of the word "person" or "party" shall mean and include any individual, trust, corporation, partnership or other entity.

R. The Parties acknowledge and understand that all of the provisions in the "Contractual Provisions Attachment," Form DA-146a (Rev. 06-12), that are applicable to the transaction contemplated by this Agreement, shall be incorporated into and made a part of this Agreement as if fully recited herein. A copy of DA-146a is attached hereto as Schedule 1 and its terms incorporated herein.

S. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

T. Each party has cooperated in the drafting and preparation of this Agreement. Hence, if any construction is to be made to this Agreement, the same shall not be construed for or against any party.

U. Time is of the essence in this Agreement.

V. Paragraph headings contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

**X. CONTACT PERSON**

The contact person for Business Associate is:

COMCARE of Sedgwick County  
Joan Tammany, Executive Director  
271 W. Third Street N, Suite 600  
Wichita, Kansas 67202  
Telephone: (316) 660-7626  
FAX: (316) 660-7510  
E-mail: joan.tammany@sedgwick.gov

The contact person for Business Associate in case of a Security Incident or Breach is:

COMCARE of Sedgwick County  
Joan Tammany, Executive Director  
271 W. Third Street N, Suite 600  
Wichita, Kansas 67202  
Telephone: (316) 660-7626  
FAX: (316) 660-7510  
E-mail: joan.tammany@sedgwick.gov

The contact person for KDADS is:

Timothy E. Keck, Secretary  
Kansas Department for Aging & Disability Services  
503 South Kansas Ave.  
Topeka, Kansas 66603  
Telephone: (785) 296-4986

With a copy to:

KDADS Chief Counsel  
Kansas Department for Aging & Disability Services  
503 South Kansas Ave.  
Topeka, Kansas 66603  
Telephone: (785) 296-4986

## **XI. SIGNATURES**

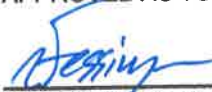
Having agreed to the terms herein, the undersigned Parties hereby represent and warrant that they are authorized to enter into and execute this Agreement.

### **COMCARE OF SEDGWICK COUNTY**

By: \_\_\_\_\_  
David T. Dennis, Chairman; Commissioner, Third Dist.      Date \_\_\_\_\_

### **KANSAS DEPARTMENT FOR AGING AND DISABILITY SERVICES**

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael L. Fessinger  
Assistant County Counselor

By: \_\_\_\_\_  
Timothy E. Keck, Secretary      Date \_\_\_\_\_

CONTRACTUAL PROVISIONS ATTACHMENT

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 1ST day of JULY, 2018.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.  
  
Contractor agrees to comply with all applicable state and federal anti-discrimination laws.  
  
The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.